

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

CRP.No. 955 of 2007()

AGAINST THE ORDER DATED 24/07/2007 IN EP.360/01 IN
OS.804/1986 of PRL.SUB COURT,IRINJALAKUDA

.....

REVN. PETITIONER: 1ST RESPONDENT(JUDGMENT DEBTOR)

V.R.ALIYAR, AGED 73 YEARS,
S/O RAYAN, PROPRIETOR, LIYAR SEA FOODS,
NO.56A, CREEK ROW, CULCUTTA RESIDING AT
VALIYAVEETIL HOUSE, POST MALA, THRISSUR.

BY ADV. SRI.BABU KARUKAPADATH
SRI.M.A.VAHEEDA BABU

RESPONDENTS: PETITIONER(DEGREE HOLDER)&RESPONDENTS 2 AND 3

1. VIJAYA BANK,
BRANCH AT 12/2 SOVA RAM BYSACK STREET,
CULCUTTA.
2. A.P.KARIGAR, NO.21,
NEW RAIPUR, P.O.GARIA,
CULCUTTA 700084.
3. MOHAMMED MOSARAFF ALI,
BELTALA BHASUGHAT, 24 PARGANAS.

BY ADV. SRI.K.C.VISWAMBARAN
SRI.C.CHANDRASEKHARAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 14/12/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER ON I.A. 2738/07 IN
C.R.P. NO: 955/2007

DISMISSED:

14/12/2007

SD/- M.N.KRISHNAN, JUDGE

M.N. KRISHNAN, J.
= = = = =
C.R.P. NO. 955 OF 2007
= = = = =
Dated this the 14th day of December, 2007.

O R D E R

This revision petition is preferred against the order of the Subordinate Judge, Irinjalakuda whereby the Court directed the revision petitioner to pay the decree debt. The question that arise for consideration was regarding the means of the judgment debtor whether there is willful evasion of payment so as to attract Section 51 of CPC. The learned Subordinate Judge has considered the matter very elaborately by referring to each and every document. The learned Subordinate Judge found that there was a mortgage in favour of the Bank namely, Bank Of India, who instituted a suit O.S.310/77 and obtained a decree. The property was sold in auction and the matter was taken up before this Court and at that stage the entire decree amount was paid and the sale was set aside. Thereafter the present revision petitioner started disposing of the property one by one. He had executed Ext.B8 and assigned a portion of the property. Thereafter gifted the properties to his wife and children by

Ext.B9 who in turn sold the property by Exts.B10 and B11. The shop room which was in the name of his son was also sold by Ext.B12. The explanation offered is that he had borrowed money from his wife and children and therefore had transferred the properties. That cannot be accepted without a pinch of salt. Under Section 51 CPC when the judgment debtor has or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, he can be arrested and detained in civil prison. Here, the Bank has obtained a decree as early as in the year 1989 in a suit which was instituted in the year 1986. Subsequent to the decree the property has come into the hands of the judgment debtor when the sale was set aside. Thereafter he had transferred the property in favour of his wife and children which according to the learned counsel for the decree holder is only to defeat and delay the creditor and it comes squarely within the ambit of Section 51 (b) so at a point of time after the decree the judgment debtor

has had the means to pay the decree debt and instead of paying the same he transferred it in favour of others and thereby has defeated the creditor from realizing the amount. The Court below considered the entire matter in the proper perspective and had arrived at a decision and therefore directed the judgment debtor to pay the decree debt. I do not find any error in the said judgment and therefore it is confirmed. But if the judgment debtor wants to wipe off the liability and wants to approach the Bank for some leniency it need not be shut out and therefore I direct the Court below not to issue any warrant of arrest against him for a period of two months and in the meanwhile the judgment debtor, if he wants, can settle the matter and after the expiry of the said period the Court is at liberty to proceed against him by ordering arrest and detention in civil prison.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.